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厦门大学

## 硕士学位论文

# 民间借贷的理论、现实与制度重构

Folk Lending Theory, Reality and Reconstruction of System

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## 内容摘要

民间借贷是我国金融体系的重要组成部分，对我国的经济发展尤其是中小企业的发展起着重要的作用。但是，长期以来，国家出于金融安全的考虑和对民间借贷风险的担忧，一直对民间借贷采取严格的管制，这极不利于发挥金融发展对经济发展的促进作用。所以我国应该如何界定民间借贷、引导和监管民间借贷市场，发挥其资金融通作用，已成为亟待解决的一个问题。本文从法学、经济学以及比较分析的方法，提出了应给与民间借贷合法的地位，正视民间借贷的正当权利，同时放松对民间借贷的管制，并建立和完善相应的监管机制的建议。文章共分四章，各章内容简略如下：

第一章主要介绍有关民间借贷的一般理论知识，包括民间借贷的概念、特点、产生的经济学理论基础等，以期为下文的论述做铺垫。第二章主要介绍我国民间借贷的现状及法律监管存在的问题。第三章主要介绍国外及台湾地区的民间借贷，通过比较研究，总结出对我国民间借贷法律规制的一些借鉴和指导意义。第四章主要介绍建立和完善民间借贷法律的监管制度，一方面使民间借贷合法化，同时也要放松管制，加强对民间借贷的监管。

本文的结论是：我国的经济、金融发展二元结构明显，长期以来对民间借贷过严的管制不利于经济的发展，同时也产生了很多社会问题。所以，应尽快明确民间借贷的合法地位，出台相关的法律，放松对民间借贷的市场准入管制，完善其市场退出机制，同时建立多层次的监管体系，引导民间借贷健康、有序的发展。

**关键词：**民间借贷；法律监管；法律完善

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## ABSTRACT

Folk lending of the financial system in China is an important part of the economic development of our country, especially in small and medium enterprise development play an important role. However, for a long time, the country out of the financial security of consideration and folk lending to the concerns of the risk, always take strict control of private lending, which is not conducive to play the financial development role in promoting economic development. So our country should define what is the folk lending and how to guide and regulatory folk lending market, play the role of financing, has become a problem to be solved. This paper, from the law, economics, as well as the method of comparison, and put forward the shall provide the legal status of folk lending, face folk lending's rights and ease folk lending controls, and to establish and perfect the corresponding regulatory mechanisms are suggested. The article is divided into four chapters, each chapter briefly as follows:

The first chapter mainly introduces the folk lending the general theory of knowledge, including folk lending's concept, the characteristic, the produce economics theory and so on, in order to the groundwork discussed below. The second chapter introduces the present situation of our country folk lending and the legal supervision existing problems. The third chapter basically introduces foreign countries and Taiwan area folk lending, by comparison, summed up China's folk lending legal regulation of some of the reference and guidance significance. The fourth chapter basically is introduced to establish and perfect the supervision of the law system of folk lending, on the one hand, make folk lending legalization, also want to relax controls, to strengthen the supervision of the folk lending.

The conclusion of this paper is: the economy of our country, development

finance two yuan structure, long-term borrowing too strict control is not conducive to the economic development, but also produced a lot of social problems. So, should as soon as possible to clear the legal status of folk lending, introduction of relevant laws, deregulation of the folk lending market access control, perfect the market exit mechanism, while the establishment of multiple levels of regulation system, guide the healthy, orderly development of private lending.

**Key Words:** Folk Lending; Legal Supervision; The Perfection of Law

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